
No. 12846

**United States Court
of Appeals**

For the Ninth Circuit

CHARLES D. BRONSON, JR.,

Appellant,

vs.

**HUGH EARLE, Collector of Internal Revenue for
the District of Oregon and United States of
America,**

Appellees.

**Appeal from the United States District Court
for the District of Oregon**

PETITION FOR REHEARING

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FILED

JUL 10 1951

AUL P. O'BRIEN

CLERK

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PETITION FOR REHEARING

Pursuant to Rule 25, of the Rules of Civil procedure of this court, appellant, by and through his attorneys of record, petitions and alleges that:

I.

The holding in this court is essentially that there

was sufficient evidence to support the findings and judgment of the lower court.

II.

The court's opinion was entered September 18, 1951, and the time for filing a petition for rehearing expires October 19, 1951.

III.

There is pending before Congress an amendment to the Internal Revenue Code, being H. R. 4473, Revenue Act of 1951, Section 313, amended by Senate Resolution as Section 339 of said bill providing for election by the taxpayer (a member of a so-called family partnership) whereby the spouse shall be recognized as a partner for tax purposes and permitted refunds under certain circumstances such provisions being retroactive to taxable years after 1938. The sections amended are Title 26, Subtitle A, Chapter 1, Supplement F to which shall be added a new section entitled "Family Partnership" and Title 26, Section 3797 (a) (2) U. S. C.

IV.

Said bill having passed the House and Senate, but in different forms, has been referred to a joint conference committee and it appears that the conferees have approved the Senate amendment to H. R. 4473, hereinabove mentioned, and it is anticipated that such legislation when and if it becomes law will, by virtue of such amendment, be determinative of the cause submitted to this court in favor of plaintiff.

V.

A final judgment has been rendered in the District Court of Oregon in favor of taxpayer's partner determining similar matters as determined in the present litigation, and that in said cause a judgment has also been entered in the case of taxpayer's partner on the same facts herein determined in favor of the United States from which said judgment an appeal is now pending in this Court.

VI.

Taxpayers have filed claim for refund based on a loss carry back of losses sustained by the partner-

ship for later years which involve the same matters presented in each of the said causes and which said matters are pending before a conferee on protest of taxpayers and can not be resolved in view of the conflicting judgments entered in the two causes.

VII.

It would appear that such legislation when passed will resolve the conflicts, doubts, and disputes involving the question as to the taxability of income from the so-called family partnership both as to this and the matters contained in *Roles v. Earle*, No. 13000, and the matters now pending before the conferee.

VIII.

Said legislation when passed will not provide sufficient time for taxpayer to print this petition and file the same with this Court within the thirty-day period after the same may become effective.

IX.

In the event that such legislation will not be determinative of this cause, petitioner will advise

the Court, and if contrary, petitioner will submit to the court copies of the pertinent parts of the legislation in support of the matter.

WHEREFORE, petitioner prays that in the event that such legislation is determinative of the cause herein contained, that the decision heretofore entered by this Court be reversed and judgment be entered accordingly or that in the alternative that petitioner be granted additional time in which he be allowed to file an amended petition if the legislation be so determinative of the issues contained herein, and that the mandate be stayed.

Warde H. Erwin

Of Attorneys for Petitioner

Certificate:

I, WARDE H. ERWIN, of attorneys for appellant, do hereby certify that in my judgment the foregoing petition is well founded in law in that legislation now pending and probably effective prior to the expiration of time to file this petition will be determinative of the issues involved in this case and contrary to the holding therein, and that

this petition is not interposed for the purpose of delay but for the preservation of any legal rights of appellant and that the court will be promptly advised as to the effect of said legislation upon passage thereof.

Ward H. Erwin

Of Attorneys for Appellant